

**REMARKS**

**Summary of the Office Action**

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Talmi et al. (U.S. Patent No. 5,821,547) (hereinafter “Talmi”) in view of Nishizawa et al. (U.S. Patent No. 4,471,228) (hereinafter “Nishizawa”).

**Summary of the Response to the Office Action**

Applicants have canceled claim 4 without prejudice or disclaimer. Applicants have also amended claim 1 to incorporate the features of canceled claim 4. Accordingly, claims 1-3 and 5 remain pending for consideration.

**Rejection under 35 U.S.C. § 103(a)**

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Talmi in view of Nishizawa. Applicants have canceled claim 4 without prejudice or disclaimer. Applicants have also amended claim 1 to incorporate the features of canceled claim 4. The rejections are respectfully traversed for at least the following reasons.

Independent claim 1 of the instant application has been newly-amended to describe a combination of features of a fluorescence measuring apparatus that includes a feature of a controller that outputs an electronic shutter signal and a transfer signal consecutively before emission of fluorescent components. Newly-amended independent claim 1 has been amended to include features from canceled claim 4 in these regards.

Applicants respectfully submit that the operation resulting from these newly-added features of independent claim 1 of the instant application is effective to prevent an unwanted charge from being stored in the photoelectric converter and in the charge storage element. See, for example, paragraph [0012] of the specification of the instant application.

Applicants respectfully submit that indeed “T” illustrated in Fig. 4C is a period when the electronic shutter signal and the transfer signal are consecutively outputted, and this period “T” is arranged before the output of excitation pulse component. See Fig. 4A for example.

In contrast, Applicants respectfully submit that Nishizawa teaches the use of an electronic shutter. However, the electronic shutter is used to control an exposure time. See col. 6, lines 43-68 of Nishizawa. In other words, Applicants respectfully submit that Nishizawa does not teach, or even suggest, an operation before light receiving.

On the other hand, in the Office Action, the Examiner asserts that “[r]egarding claim 4, Talmi discloses wherein the controller (302) outputs electronic signal and transfer signal consecutively before emission of the fluorescence components.” Applicants respectfully submit that this interpretation is clearly technically incorrect for at least the following reasons.

Applicants respectfully submit that the emission of sample (304) is caused by the emission of laser (303) and the laser (303) is driven by the reception of synchronizing signals. In accordance with Fig. 4 and the teaching of col. 5, lines 4-20, the gather charge signal (402) is sent at the end of the response period T1 after the sending of synchronizing signal (401), and the transfer charge signal (403) is sent at the end of response period T2 after the sending of gather charge signal (402). Furthermore, Applicants respectfully submit that Nishizawa clearly teaches

“the effect of the background is greatly reduced by capturing signal only during the sampling time.” That is, Applicants respectfully submit that it is clear that Nishizawa does not teach, or even suggest, an operation before the sending of the synchronizing signal.

Accordingly, for at least the foregoing reasons, Applicants respectfully submit that the cited references, whether taken separately or combined, do not teach or suggest at least an operation before light emission of a sample in the manner specifically described in newly-amended independent claim 1 of the instant application. Therefore, Applicants believe that newly-amended independent claim 1 of the instant application is in condition for allowance over the applied art of record.

Accordingly, Applicant respectfully asserts that the rejections under 35 U.S.C. § 103(a) should be withdrawn because the applied art of record, whether taken separately or combined, do not teach or suggest each feature of independent claim 1, as amended. MPEP § 2143.03 instructs that “[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 409 F.2d 981, 180 USPQ 580 (CCPA 1974).” Furthermore, Applicant respectfully asserts that dependent claims 2-3 and 5 are allowable at least because of their dependence from newly-amended independent claim 1, and the reasons set forth above.

### **CONCLUSION**

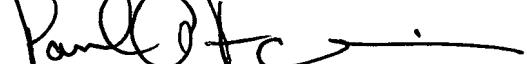
In view of the foregoing, Applicants submit that the pending claims are in condition for allowance, and respectfully request reconsideration and timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this

response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

**DRINKER BIDDLE & REATH LLP**



Paul A. Fournier  
Reg. No. 41,023

Dated: May 23, 2007

By:

**Customer No. 055694**

**DRINKER BIDDLE & REATH LLP**  
1500 K Street, N.W., Suite 1100  
Washington, DC 20005-1209  
Tel.: (202) 842-8800; Fax: (202) 842-8465